



WILLIAM T FUJIOKA  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
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July 15, 2008

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS:  
APPROVAL OF AMENDMENT NO. 12 TO LEASE NO. 6684 TO MODIFY  
REDEVELOPMENT WORK AND LEASEHOLD AREA ON PARCEL 20  
(PANAY WAY MARINA) – MARINA DEL REY  
(FOURTH DISTRICT) (4 VOTES)**

**SUBJECT**

This Board letter requests that your Board approve an amendment to the lease with Panay Way Marina (Parcel 20) which will make various changes to reflect changed circumstances since Parcel 20 lease was extended for 39 years in 2004.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed amendment to the Parcel 20 lease is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Authorize the Chair to execute the attached Amendment No. 12 to Lease No. 6684 and the Memorandum of Lease Amendment with Panay Way Marina, L.P., a California limited partnership, for Parcel 20 lease in Marina del Rey, primarily relating to the use and development of a portion of Parcel 20 referred to herein as the Yacht Club Parcel.

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE B. BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

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Fifth District

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### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The County is the lessor of a ground lease for Parcel 20, which was originally entered into in 1963 for a term of 60 years. On September 9, 2004, your Board executed an Amended and Restated Lease Agreement (Lease) extending the original expiration date of Lease No. 6684 for a term of 39 years with a new expiration date of December 31, 2061, and requiring the lessee, Panay Way Marina, L.P. (Lessee), to pay a \$450,000 lease extension fee and implement a redevelopment program to include construction of a new 99-unit apartment building, replacement of existing docks with new docks, and construction of a 6,885 square foot new commercial building for the existing yacht club (Pacific Mariners Yacht Club) and commercial sublessees and of a waterfront promenade. Lessee has since completed construction of the 99-unit apartment building and the waterfront promenade fronting the new apartments, as well as replaced the docks.

In 2005, Lessee and County engaged in negotiations to amend the Lease. At that time, Lessee desired to relocate the Pacific Mariners Yacht Club and commercial sublessees into the proposed redevelopment project on Parcel 21 to be developed by Lessee's affiliate. The County in turn desired to reacquire the portion of Parcel 20 originally intended for the commercial building for use as a new administration building (Administration Building) for the Department of Beaches and Harbors (Beaches and Harbors). The parties, therefore, agreed to divide Parcel 20 into two parcels, one of which (reduced Parcel 20) would be retained by Lessee containing the newly constructed 99-unit apartment building, boat slips and the related parking and the other of which (referenced herein as the Yacht Club Parcel) would be returned to County.

Since that agreement was reached, circumstances have changed. The changed circumstances include, among others, that: a) the Department has selected a different site as its preferred alternative for its Administration Building; b) the Pacific Mariners Yacht Club is contemplating a merger with the Santa Monica Windjammers Yacht Club and a potential relocation to a larger facility in Burton Chace Park to accommodate the merged entity; and c) the Lessee desires to retain the Yacht Club Parcel for redevelopment if the County decides not to utilize the Yacht Club Parcel for its Administration Building. However, Beaches and Harbors still desires to retain an option to reacquire the Yacht Club Parcel, while also protecting the tenancy of the Pacific Mariners Yacht Club, until final decisions are made both as to the location of the Department's Administration Building and as to Pacific Mariners Yacht Club's plans. The proposed Amendment No. 12 to Lease No. 6684 (Amendment) addresses the changed circumstances and competing interests as follows:

(1) The Amendment provides that the County has up to seven years to notify the Lessee that it intends to build the Administration Building on the Yacht Club Parcel. Upon receipt of such notice, Lessee is required to demolish the existing yacht club facility and reconvey the Yacht Club Parcel to the County. In the event of such reconveyance, the then current rent for Parcel 20 is not adjusted, except that future minimum rent is calculated based only upon the gross revenues generated from the portion of Parcel 20 retained by Lessee.

(2) The Amendment defers the demolition and redevelopment of the Yacht Club Parcel until the earliest of (i) County's notice of its intention to build the Department's Administration Building on the Yacht Club Parcel, (ii) approval of plans by the Board and the California Coastal Commission for the construction of the Administration Building and yacht club facility at alternative sites, or (iii) seven years from the effective date of the Amendment. If the County does not exercise its right to reacquire the Yacht Club Parcel for the purpose of constructing the Administration Building on the Yacht Club Parcel, Lessee shall be required to redevelop the Yacht Club Parcel in accordance with a development plan acceptable to County and land use entitlements issued by applicable governmental authorities. Should Pacific Mariners Yacht Club determine not to merge with the Santa Monica Windjammers Yacht Club and/or elect to relocate elsewhere, Lessee has the obligation to retain the yacht club at a location on either Parcel 20 or Parcel 21.

#### **Economic Incentive if Pacific Mariners Yacht Club Relocates**

Recognizing the economic benefit to Lessee if the Pacific Mariners Yacht Club relocates and Lessee is, thereby, relieved of its obligation to lease space to the yacht club, the Lessee has agreed in the Amendment to pay the County \$800,000 if Pacific Mariners Yacht Club ceases for any reason to be a sublessee on either Parcel 20 or Parcel 21 within seven years from the effective date of the Amendment. If this occurs, Beaches and Harbors will recommend that the Board use the \$800,000 to help fund the new expanded yacht club facility proposed for Chace Park.

The Amendment also amends certain other provisions of the Lease including: a) provision for parking and certain easements over Parcel 20 and the Yacht Club Parcel in the event the Yacht Club Parcel reverts back to the County; b) provisions pertaining to the use and development of the portion of the promenade located adjacent to the Yacht Club Parcel; and c) incorporation into the Parcel 20 Lease of updated lender protection provisions.

The Amendment calls for Lessee and the County to sign a Memorandum of Lease Amendment, in recordable form, following the effective date of the Amendment.

### **Implementation of Strategic Plan Goals**

This recommendation furthers the County's Strategic Plan Goals of Service Excellence (Goal 1) and Fiscal Responsibility (Goal 4), as a new facility will be provided the Pacific Mariners Yacht Club, a priority use in the Marina, if it does not merge with the Santa Monica Windjammers Yacht Club or relocate elsewhere and the County has secured for its purposes at no cost a site for the Administration Building if it is not able to be constructed at the preferred site.

### **FISCAL IMPACT/FINANCING**

If the Department builds its Administration Building at the Yacht Club Parcel, the site will have been secured at no cost to the County. Additionally, if Pacific Mariners Yacht Club relocates, the County will receive \$800,000, which Beaches and Harbors will recommend be used to fund the new expanded yacht club facility proposed for Chace Park.

### **Operating Budget Impact**

The Amendment will have no impact on the operating budget of Beaches and Harbors unless the Yacht Club chooses to relocate during the seven year window mentioned above, whereupon the County will receive a one time payment of \$800,000.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The Department is currently considering the southwest corner of Admiralty Way and Mindanao Way, the current site of the Visitor's Center, as the preferred site for its Administration Building. This location would provide the County with a prominent location in the Marina and easier access for the public. However, it is uncertain whether the County will be able to obtain all necessary approvals for the construction of the Administration Building at this site. As a result, it is prudent for the County to retain an option for a reasonable period of time to reacquire the Yacht Club Parcel for the new Administration Building.

Except for the provisions in the Amendment relating to the use and development of the Yacht Club Parcel, the economic incentive pertaining to the relocation of Pacific Mariners Yacht Club, and certain other provisions described above, all other terms of the Lease for Parcel 20 remains unchanged.

The Amendment of the existing lease is authorized by Government Code Sections 25907 and 25536.

The Small Craft Harbor Commission (SCHC) meeting held on February 13, 2008, endorsed the Director's recommendation to approve the Amendment and Memorandum of Amendment in the form attached. County Counsel has approved the documents as to form. During the SCHC meeting, members of the public expressed the need for a review of the entire development process and objected to the location of the Administration Building on the proposed parcel. Other members of the community including representatives from the Pacific Mariners Yacht Club, a sublessee on the parcel, spoke in support of the amendment and were satisfied with the handling of the issues surrounding the potential relocation of the yacht club facilities.

#### **ENVIRONMENTAL DOCUMENTATION**

The Amendment is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. Entering into the Amendment does not authorize construction or reconstruction of any improvements.

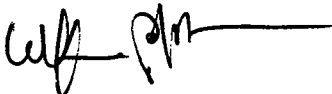
#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

No impact on current services is anticipated as a result of the Amendment.

#### **CONCLUSION**

Please return one adopted, stamped copy of this letter to the Chief Executive Office, and one to the Department of Beaches and Harbors. Also, return two executed copies of each document to the Department of Beaches and Harbors.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

WTF:DL:JSE  
SHK:DG:tlh

Attachments

c: County Counsel  
Department of Beaches and Harbors

AMENDMENT NO. 12 TO AMENDED AND RESTATED LEASE NO. 6684  
PARCEL 20 – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT NO. 12 TO AMENDED AND RESTATED LEASE (“Amendment”) is made and entered into this \_\_\_\_ day January, 2008 (“Effective Amendment Date”) by and between COUNTY OF LOS ANGELES (“County”) and PANAY WAY MARINA, L.P., a California limited partnership (“Lessee”).

RECITALS

WHEREAS, the parties hereto or their predecessors in interest, on the 20<sup>th</sup> day of March, 1963 entered into Lease No. 6684, as amended and restated pursuant to that certain Amended and Restated Lease Agreement dated September 9, 2004 (as amended, the “Lease”) under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, commonly known as Parcel 20, which leasehold premises (the “Premises”) is more particularly described on Exhibit “A” attached hereto and incorporated herein; and

WHEREAS, the portion of the Premises described on Exhibit “B” attached hereto (the “Yacht Club Parcel”) is currently improved with a commercial building described in Section 3.1 of the Lease as the “Existing Commercial Building” and other ancillary improvements; and

WHEREAS, the Existing Commercial Building is currently occupied, in part, by Pacific Mariners Yacht Club (the “Yacht Club Sublessee”) pursuant to a Sublease dated December 29, 1986 (as amended, the “Yacht Club Sublease”); and

WHEREAS, the parties desire to enter into this Amendment to document the parties’ agreement with respect to certain matters pertaining to the current and future use and development of the Yacht Club Parcel and other portions of the Premises.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, and each of them, agree as follows effective as of the Effective Amendment Date:

1. Capitalized Terms. All capitalized terms used in this Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Lease.

2. Use and Development of Yacht Club Parcel.

2.1 Notwithstanding any contrary provision of Sections 3.1 and 5.1 of the Lease, but subject to Section 2.5 below, until a Trigger Event (as defined below) has occurred, (a) the Existing Commercial Building and other Improvements currently located on the Yacht Club Parcel shall not be demolished, (b) the Yacht Club Parcel shall not be redeveloped pursuant to Section 5.1 of the Lease, and (c) the Yacht Club Parcel

shall continue to be used by Lessee for the same yacht club and other ancillary purposes for which the Yacht Club Parcel is used as of the Effective Amendment Date. For purposes of this Amendment, "Trigger Event" means the occurrence of any of the following: (i) the occurrence of the seventh (7<sup>th</sup>) anniversary of the date of the approval by the Board of this Amendment; (ii) the Chace Park Master Plan (or an amendment, replacement or other modification thereof) is approved by the Board and the California Coastal Commission (including any required Local Coastal Plan amendments) to permit County to construct a Department administration building and yacht club facility in Chase Park; or (iii) written notice from County to Lessee that County requires possession of the Yacht Club Parcel for the development of a Department administration building thereon ("County Development Notice").

2.2 If the Trigger Event that is first to occur is either clause (i) or (ii) in Section 2.1 above, then upon the occurrence of such first Trigger Event, Lessee shall proceed with diligence to (a) perform all design work and obtain all final, non-appealable governmental permits and approvals required for the redevelopment of the Yacht Club Parcel with new improvements approved by Department and consistent with the land use entitlements for the Yacht Club Parcel as determined by County (in its governmental function, as opposed to proprietary function as lessor under this Lease), the California Coastal Commission and any other applicable governmental authority (collectively, the "Yacht Club Parcel Approvals"); and (b) upon receipt of all Yacht Club Parcel Approvals, to demolish the existing Improvements on the Yacht Club Parcel and construct new Improvements on the Yacht Club Parcel in accordance with the Yacht Club Parcel Approvals (the "Yacht Club Parcel Redevelopment Work"). Subject to Section 2.5 below, until the receipt by Lessee of the Yacht Club Parcel Approvals, Lessee shall continue to use the Yacht Club Parcel for the same yacht club and other ancillary purposes for which the Yacht Club Parcel is used as of the Effective Amendment Date. The Yacht Club Parcel Redevelopment Work shall constitute the "Redevelopment Work" under the Lease with respect to the Yacht Club Parcel and shall replace the New Commercial Building to have been constructed by Lessee on the Yacht Club Parcel under the Lease as part of the Redevelopment Work. Lessee shall be obligated to obtain the Yacht Club Parcel Approvals not later than eighteen (18) months following the date of the first Trigger Event (the "Required Yacht Club Parcel Approval Date"); provided, however, if Lessee has exercised its best diligent efforts to obtain the Yacht Club Parcel Approvals within such eighteen (18) month period, but is unable to do so, then Director shall have the right in the exercise of its reasonable discretion, to grant Lessee one or more extensions of the Required Yacht Club Parcel Approval Date, provided that in no event shall the Required Yacht Club Parcel Approval Date be extended beyond twenty-four (24) months following the date of the first Trigger Event. Lessee shall be obligated to cause the Substantial Commencement of Construction of the Yacht Club Parcel Redevelopment Work to occur not later than six (6) months after Lessee's receipt of the Yacht Club Parcel Approvals (for purposes of Section 5.7 of the Lease, the "Anticipated Commencement Date"), and shall cause the substantial completion of the Yacht Club Parcel Redevelopment Work to occur not later than twenty-four (24) months after Lessee's receipt of the Yacht Club Parcel Approvals (for purposes of Section 5.7 of the Lease, the "Anticipated Completion Date"). The terms and provisions of Section 5.7 of

the Lease shall be applicable to the construction of the Yacht Club Parcel Redevelopment Work, except that (1) the Yacht Club Parcel Redevelopment Work shall be considered as a "Phase" under such Section 5.7, (2) all references in Section 5.7 to the "New Commercial Building" shall be deemed replaced with the Yacht Club Parcel Redevelopment Work, and (3) the Anticipated Commencement Date and Anticipated Completion Date for the Yacht Club Parcel Redevelopment Work shall be as set forth in this Section 2.2. The design approval process for the Yacht Club Parcel Redevelopment Work shall proceed in accordance with the terms and provisions of Sections 5.2 through 5.4 of the Lease, and the terms and provisions of Sections 5.5, 5.6, 5.8, 5.9 and 5.12 of the Lease shall also be applicable to the Yacht Club Parcel Redevelopment Work.

2.3 If the Trigger Event that is first to occur is clause (iii) in Section 2.1 above, then effective as of the date selected by County in the County Development Notice as the "Yacht Club Parcel Termination Date", which date shall be not less than one hundred twenty (120) days nor more than one (1) year after the date of the County Development Notice, the Lease shall terminate with respect to the Yacht Club Parcel. On or prior to the Yacht Club Parcel Termination Date, Lessee shall demolish the Existing Commercial Building (if such building has not already been demolished pursuant to Section 2.5 below) and surrender possession of the Yacht Club Parcel to County in the condition required on the expiration or earlier termination of the Lease. For purposes of the immediately preceding sentence, County shall notify Lessee in the County Development Notice of whether County requires Lessee to remove all or any portion of the then remaining other Improvements located on the Yacht Club Parcel. The ownership of any Improvements that County does not require to be removed from the Yacht Club Parcel shall revert to County as of the Yacht Club Parcel Termination Date. On or prior to the Yacht Club Parcel Termination Date, Lessee shall demolish and remove all Improvements that Lessee is required to demolish hereunder, at Lessee's sole cost and expense, and surrender possession of the Yacht Club Parcel to County in the condition required under the Lease upon the expiration or earlier termination of the Lease. If Lessee fails to perform its obligations under this paragraph, then County shall have the right to perform such obligations on Lessee's behalf and charge Lessee the Actual Cost incurred by County in connection therewith. Subject to Lessee's obligations under this Section 2.3, effective on the Yacht Club Parcel Termination Date the Term of the Lease shall expire with respect to the Yacht Club Parcel and Lessee shall have no further rights or interest in the Yacht Club Parcel. There shall be no adjustment to the Annual Minimum Rent, Percentage Rent or Extension Fee payable under the Lease in the event of a termination of the Lease with respect to the Yacht Club Parcel; provided, however, for purposes of calculating the Annual Minimum Rent for periods effective on and after the first Adjustment Date that follows the Yacht Club Parcel Termination Date, all references in Article 4 of the Lease to the average total Annual Rent that was payable for periods preceding the period in which the then current Annual Rent is calculated shall mean and refer to the average total Annual Rent that was payable with respect to the remaining Premises under the Lease (excluding the Yacht Club Parcel). In the event of the termination of the Lease with respect to the Yacht Club Parcel, all references to yacht club, commercial office or other commercial uses or facilities in Sections 3.1, 3.3, 3.7 and 10.1 of the Lease shall be deemed deleted from the Lease, and Section 3.9 and Exhibit C



of the Lease also shall be deemed deleted from the Lease. If the Lease is terminated with respect to the Yacht Club Parcel pursuant to this Section 2.3, then at County's request County and Lessee shall execute an amendment to this Lease and Lessee shall execute a quitclaim deed with respect to the Yacht Club Parcel, to confirm the termination of the Lease with respect to the Yacht Club Parcel, and County and Lessee shall execute any other documents as reasonably necessary or appropriate to effectuate the termination of the Lease with respect to the Yacht Club Parcel; provided, however, that no failure to execute an amendment to this Lease or a quitclaim deed with respect to the Yacht Club Parcel shall have any effect upon the termination of the Lease with respect to the Yacht Club Parcel as set forth in this Section 2.3.

2.4 Lessee agrees to cooperate with any efforts by County to obtain all governmental approvals and entitlements for the development of a Department administration facility on the Yacht Club Parcel, and neither Lessee nor any of its affiliates shall object or take any action to interfere with the development of such facility.

2.5 If prior to the occurrence of a Trigger Event the Yacht Club Sublessee ceases to occupy space in the Existing Commercial Building, then upon written request by County, Lessee shall, at Lessee's sole cost and expense, demolish and remove the Existing Commercial Building and such other Improvements located on or under the Yacht Club Parcel as requested by County to be demolished and removed, and improve the Yacht Club Parcel as open space or as a surface parking lot, in accordance with plans and specifications approved by Department. Lessee shall complete the work described in this Section 2.5 within one hundred twenty (120) days after written request by County.

3. Yacht Club Payment. If within seven (7) years after the approval by the Board of this Amendment and the Parcel 21 Option (as defined in Section 4.2 below), a Payment Event (as defined below) occurs, then within thirty (30) days after the occurrence of the Payment Event, Lessee shall pay to County the sum of Eight Hundred Thousand Dollars (\$800,000.00). For purposes hereof, a "Payment Event" shall mean (i) the Yacht Club Sublessee (or its successor or assign) relocates to a location other than the Premises or the Parcel 21 Premises (as defined in Section 4.2 below); (ii) the Yacht Club Sublessee (or its successor or assign) totally or substantially dissolves, disbands, closes for business or otherwise ceases operation at the Premises or the Parcel 21 Premises; (iii) the Yacht Club Sublessee (or its successor or assign) merges, consolidates, joins, or participates in a reorganization or reconstitution, with another entity, or forms a different entity, at a location other than the Premises or the Parcel 21 Premises; (iv) the Yacht Club Sublease terminates; or (v) the Yacht Club Sublessee (or its successor or assign) enters into an agreement to do any of the foregoing.

4. Restaurant Percentage Rent. The percentage set forth in category (j) of subsection 4.2.2 of the Lease is hereby changed from THREE AND ONE-HALF PERCENT (3.5%) to FOUR PERCENT (4%).

5. Surface Parking Area. The terms and provisions of this Section 5 shall be applicable only in the event that the Lease is terminated with respect to the Yacht Club Parcel pursuant to Section 2.3 above.

5.1 As of the Effective Amendment Date, the Premises includes a surface parking area (the "Surface Parking Area") located between the New Apartments and the Existing Commercial Building on the Yacht Club Parcel. Subject to the terms and provisions of this Section 5, the Surface Parking Area shall mean and include the entire surface parking area now or hereafter located between (a) the New Apartments, and (b) either the Existing Commercial Building or any building hereafter constructed in place of the Existing Commercial Building on the Yacht Club Parcel. If the Lease is terminated with respect to the Yacht Club Parcel, then County, in its capacity as fee owner of the Yacht Club Parcel, shall have the right to enlarge, reduce, eliminate or otherwise modify the portion of the Surface Parking Area located on the Yacht Club Parcel in connection with the development of a Department administration facility; provided, however, that prior to any termination of the right of Lessee to use the Surface Parking Area located on the Yacht Club Parcel pursuant to Section 5.2 below, no such modification of the portion of the Surface Parking Area located on the Yacht Club Parcel shall cause the remaining Premises under the Lease to be in violation of parking code requirements. The Surface Parking Area shall not include any subterranean or above-ground parking structure or covered parking hereafter constructed on the Yacht Club Parcel, nor any surface parking that is now or hereafter located to the East of the Existing Commercial Building or any building hereafter constructed on the Yacht Club Parcel in place of the Existing Commercial Building.

5.2 The Surface Parking Area is located partly on the Yacht Club Parcel and partly on the remaining portion of the Premises. The Surface Parking Area shall be used for parking purposes for the Anchorage Improvements located on the remaining portion of the Premises and the Improvements located (or to be located) on the Yacht Club Parcel. Lessee shall have the exclusive use of the portion of the Surface Parking Area located on the remaining portion of the Premises, subject to a non-exclusive appurtenant easement running in favor of the Yacht Club Parcel to use the entrances, exits and drive aisles located on the Surface Parking Area for access to and from Panay Way at the existing entrance/exit to the Surface Parking Area located immediately to the East of the New Apartments. The Lease of the remaining portion of the Premises to Lessee is expressly subject to the foregoing access easement. Lessee shall not make any modifications or alterations to the Surface Parking Area that interfere with such access. The portion of the Surface Parking Area that is located on the Yacht Club Parcel shall be used in common by both the Yacht Club Parcel and the remaining portion of the Premises. In the event that the Lease is terminated with respect to the Yacht Club Parcel, then effective as of such termination County grants Lessee, in its capacity as lessee of the remaining Premises, a non-exclusive easement for common parking purposes over the portion of the Surface Parking Area located on the Yacht Club Parcel, which common use shall be on a first-come, first-served unreserved basis, subject to the right of the County to designate for the exclusive use of the Yacht Club Parcel up to nine (9) parking stalls on the portion of the Surface Parking Area located on the Yacht Club Parcel, which exclusive parking stalls shall be located in an area or areas of the Yacht Club Parcel selected by County. Lessee's right to use the portion of the Surface Parking Area located on the Yacht Club Parcel shall also be subject to the right of County to use such area for

construction staging purposes in connection with the redevelopment of the Yacht Club Parcel, except that prior to the termination of the right of Lessee to use the Surface Parking Area located on the Yacht Club Parcel, no such construction staging use of the portion of the Surface Parking Area located on the Yacht Club Parcel shall cause the remaining portion of the Premises to be in violation of parking code requirements.

County and Lessee's affiliate, Holiday-Panay Way Marina, L.P. ("Parcel 21 Lessee"), as current lessee of Parcel No. 21 located adjacent to the Premises (the "Parcel 21 Premises"), are currently herewith entering into an Option to Amend Lease Agreement pursuant to which County has granted to the Parcel 21 Lessee an option to extend the term of the existing lease for the Parcel 21 Premises (the "Parcel 21 Option") for the purpose of facilitating the redevelopment of the Parcel 21 Premises. In connection with such redevelopment of the Parcel 21 Premises, it is contemplated that the parking facilities utilized to satisfy the parking requirements for the Anchorage Facilities located on the Premises will be relocated from the Surface Parking Area to new parking facilities to be constructed on the Parcel 21 Premises. Such redevelopment of the Parcel 21 Premises is contingent upon the satisfaction by the Parcel 21 Lessee of the conditions to the exercise of the Parcel 21 Option (including, without limitation, receipt of the necessary entitlements for the redevelopment of the Parcel 21 Premises and the acquisition of financing for such redevelopment), and the actual exercise of the Parcel 21 Option by the Parcel 21 Lessee (the "Parcel 21 Option Contingencies"). Lessee acknowledges that County has no obligation to Lessee with regard to the satisfaction of the Parcel 21 Option Contingencies. Lessee agrees to cooperate with County and the Parcel 21 Lessee in any efforts to obtain any and all governmental approvals that may be required for the relocation of the parking for the Anchorage Improvements from the Surface Parking Area to the Parcel 21 Premises. If the Parcel 21 Option Contingencies are satisfied, then the easement granted to Lessee in this Section 5.2 to use the portion of the Surface Parking Area located on the Yacht Club Parcel shall terminate upon the earlier of the substantial completion by the Parcel 21 Lessee of the replacement parking facilities to be located on the Parcel 21 Premises or the required date for such substantial completion set forth in the amended and restated lease for Parcel 21 to be executed by County and the Parcel 21 Lessee upon satisfaction of the Parcel 21 Option Contingencies.

5.3 Notwithstanding any termination of the Lease with respect to the Yacht Club Parcel, as long as Lessee retains any easement or other rights to use the portion of the Surface Parking Area located on the Yacht Club Parcel, (a) Lessee shall be responsible, at Lessee's sole cost and expense, for the repair and maintenance of the entire Surface Parking Area (including that portion located on the Yacht Club Parcel) in the condition required under Section 10.1 of the Lease, including without limitation, periodic repaving or slurry coating, and re-striping, as reasonably necessary; and (b) all of the Lessee's obligations under the Lease pertaining to insurance and indemnification shall apply to the entire Surface Parking Area as if such entire Surface Parking Area was a part of the Premises.

6. Promenade

6.1 Regardless of any termination of the Lease with respect to the Yacht Club Parcel, the Promenade described in Section 15.19 of the Lease shall be retained as part of the Premises, except as described in Section 6.2 below. Pursuant to Section 15.19 of the Lease, Lessee is required to complete certain improvements to the Promenade (referred to in Section 15.19 of the Lease as the "Promenade Work") as part of the Redevelopment Work, and to maintain and repair the Promenade during the Term of the Lease. As of the Effective Amendment Date, Lessee has completed certain portions of the Promenade Work located adjacent to the New Apartments. The remaining Promenade Work shall be performed by Lessee in accordance with the schedule set forth in Section 5.7 of the Lease.

6.2 The Existing Commercial Building located on the Yacht Club Parcel is located approximately twelve (12) feet from the bulkhead. However, upon the demolition of the Existing Commercial Building, the width of the Promenade shall be expanded by an additional approximately eight (8) feet such that the width of the Promenade in such area is twenty (20) feet. Only the existing twelve (12) foot width of the Promenade is included in the remaining portion of the Premises in the case of the termination of the Lease with respect to the Yacht Club Parcel. Upon the demolition of the Existing Commercial Building in connection with or following the termination of the Lease with respect to the Yacht Club Parcel, all of the obligations of Lessee under Section 15.19 of the Lease (including, without limitation, Lessee's obligations with respect to the Promenade Work and Lessee's obligations with respect to maintenance and repair of the Promenade) shall apply not only to the portion of the Promenade located on the remaining Premises, but also to the additional approximately eight (8) foot width of the expanded Promenade located on the Yacht Club Parcel as described above. Lessee shall perform such obligations at Lessee's sole cost and expense; provided, however, that County shall be responsible for any and all repairs required as a result of construction or other work performed by or on behalf of County on the Yacht Club Parcel following the termination of the Lease with respect to the Yacht Club Parcel (other than the required demolition by Lessee of the Existing Commercial Building and other Improvements on the Yacht Club Parcel), to the extent such repairs are necessary to restore the Promenade to the condition existing prior to any construction or other work (except with respect to the expansion of the Promenade as contemplated herein). The public easement described in Section 15.19 of the Lease shall apply to the entire width of the Promenade, as expanded.

6.3 If the Lease is terminated with respect to the Yacht Club Parcel, then Lessee is hereby granted an appurtenant easement over the portion of the Promenade to be located on the Yacht Club Parcel for the purpose of completing Lessee's construction of the Promenade Work on such portion of the Promenade and for the purpose of performing Lessee's maintenance and repair obligations under Section 15.19 of the Lease. If the Lease is terminated with respect to the Yacht Club Parcel, then all of the terms and provisions of the Lease applicable to Lessee's performance of the Promenade Work as part of the Redevelopment Work and Lessee's maintenance and

repair of the Promenade (including without limitation, Lessee's obligations with respect to insurance and indemnification) shall be equally applicable to the portion of the Promenade located on the Yacht Club Parcel as if such portion of the Promenade was located on the remaining portion of the Premises.

6.4 If the Lease is terminated with respect to the Yacht Club Parcel, then in connection with the demolition of the Existing Commercial Building on the Yacht Club Parcel and the construction of the Department administration facility, County reserves an appurtenant easement running in favor of the Yacht Club Parcel over the portion of the Promenade located adjacent to the Yacht Club Parcel for purposes of (a) construction staging, scaffolding and other construction purposes, and (b) subterranean footers, tie-backs and other subjacent and lateral support. If the Lease is terminated with respect to the Yacht Club Parcel, County also reserves an appurtenant easement running in favor of the Yacht Club Parcel over the portion of the Promenade located on the remaining Premises adjacent to the Yacht Club Parcel for purposes of pedestrian ingress and egress to and from the Yacht Club Parcel.

7. County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Amendment and the terms sheets and memoranda that preceded it. County shall deliver to Lessee a report detailing such expenditures within ninety (90) days after the Effective Amendment Date.

8. Encumbrances. Article 12 of the Lease is amended in full to read as follows:

“12. ENCUMBRANCES.

12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "Financing Event" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "Ownership Interests"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of subsection 12.1.2 below and Sections 4.6 through 4.8 above, a "Financing Event" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "Encumbrance" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership

Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "Encumbrance Holder") as security for a loan. The term "Encumbrance Holder" shall also be deemed to include any successors and assigns of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or any designee which has been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such permitted successors, assigns or designees shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease; provided, however, no successor, assign or designee of an Encumbrance Holder that is affiliated with Lessee or any person or entity with a direct or indirect ownership interest in Lessee shall be entitled to any of the rights or protections granted to Encumbrance Holders under this Lease. The term "Equity Encumbrance Holder" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Events. Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents, then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual

Cost incurred in connection with its review of the proposed Financing Event. One copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

**12.2 Consent Requirements In The Event of a Foreclosure Transfer.**

**12.2.1 Definitions.** As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "Equity Foreclosure Transferee" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

**12.2.2 Foreclosure Transfer.** The consent of County shall not be required with respect to any Foreclosure Transfer. In addition, no Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger the obligation to pay a Net Proceeds Share to County or any recapture right of County under subsection 11.2.4 of this Lease.

**12.2.3 Subsequent Transfer By Encumbrance Holder.** For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such

transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

**12.3 Effect of Foreclosure.** In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

**12.3.1** Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "Institutional Lender"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

**12.3.2** Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in subsection 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 of this Lease.

**12.3.3** Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not



disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "Excluded Defaults"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this subsection 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any acceleration of the Extension Payments payable by Lessee under Section 2.2 of this Lease or any other financial obligation of Lessee under this Lease, (iii) any recapture right on the part of County, or (iv) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definitions of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction work described in Sections 5.1 or 5.14 above (other than any obligations to make deposits into the Renovation Fund) shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this

subsection 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 No Subordination. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.2), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.2.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "initial cure period"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

## 12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s).

If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 Priority of New Lease. The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance (except for easements or other matters to which this Lease is subject) on County's fee interest in the Premises (except for easements or other matters to which this Lease is subject), and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (ii) any funds required to be held in the Renovations Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall

be automatic and self-executing whether or not such written confirmation is obtained.

12.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

12.12 Acceleration of Extension Fee. So long as (i) no Event of Default exists based on nonpayment of an individual Extension Payment payable by Lessee pursuant to Section 2.2. of this Lease (even if any other Event of Default exists that is not based on nonpayment of an individual Extension Payment), or (ii) if an Event of Default exists based on nonpayment of an individual Extension Payment, an Encumbrance Holder, Foreclosure Transferee or the single subsequent transferee of a Foreclosure Transferee pursuant to subsection 12.2.3 cures such Event of Default by paying to County all past-due individual Extension Payments together with any default interest and/or Late Fees that may be owing thereon; then County shall not declare the entire remaining unpaid Extension Fee immediately due and payable, or, if County has previously declared the entire remaining unpaid Extension Fee immediately due and payable, County shall rescind such acceleration and permit the reinstatement of the original payment terms of the Extension Fee (i.e., by annual Extension Payments)."

9. Lessee's Notice Address. Section 15.10 of this Lease is amended to replace the notice address information of Lessee with the following:

LESSEE: Panay Way Marina, L.P.  
c/o Goldrich & Kest Industries  
5150 Overland Avenue  
Culver City, California 90230  
Attention: Warren Breslow  
Phone: 310/204-2050  
Fax: 310/204-1900

With a copy to: Panay Way Marina, L.P.  
c/o Goldrich & Kest Industries  
5150 Overland Avenue  
Culver City, California 90230  
Attention: William Yerrick, General Counsel  
Phone: 310/280-5043  
Fax: 310/280-5014

10. Anchorage Improvements. For the purpose of correcting an inadvertent error in Section 5.14 of the Lease, all references in Section 5.14 of the Lease to “Anchorage Facilities” are amended to read “Anchorage Improvements.”

11. No Other Modifications. Except as herein specifically amended, all terms, conditions, and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby.

12. Memorandum of Lease Amendment. County and Lessee shall execute and acknowledge a Memorandum of Lease Amendment in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Amendment Date.

SIGNATURES ON FOLLOWING PAGE



IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment No. 12 to Amended and Restated Lease to be subscribed by the Chair of said Board and attested by its Executive Officer, and the Lessee has executed the same.

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

# 22 JUL 15 2008

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

PANAY WAY MARINA, L.P.,  
a California limited partnership

By: *[Signature]*  
Jona Goldrich, as Trustee of the  
Goldrich Trust No. 1, a general  
partner

COUNTY OF LOS ANGELES

By: *[Signature]*  
Chair, Board of Supervisors

ATTEST:

SACHI HAMAI,  
Executive Officer of the Board of Supervisors

By: *[Signature]*  
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,  
County Counsel

By: *[Signature]*  
Deputy



I hereby certify that pursuant to  
Section 20150 of the Government Code,  
delivery of this document has been made.

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By: *[Signature]*  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: *[Signature]*

6684, supplement 12

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

Parcels 245 to 262 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Reserving and excepting therefrom unto the County of Los Angeles easements for sanitary sewer, fire access and harbor utility purposes over those portions thereof designated on said map to be reserved by said county for such purposes.

Subject to the public easement reserved by the County of Los Angeles in Section 15.19 of the Lease.

EXHIBIT B

LEGAL DESCRIPTION OF YACHT CLUB PARCEL

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS :

LOTS 246 AND 248 OF L.A.C.A. MAP NO. 88, AS PER MAP RECORDED IN BOOK 1  
PAGES 53 TO 70 INCLUSIVE OF ASSESSOR'S MAPS, IN THE OFFICE OF THE  
COUNTY RECORDER OF SAID COUNTY.

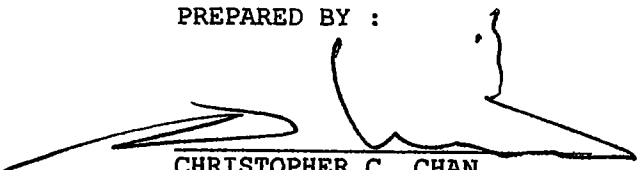
EXCEPT THEREFROM THE NORTHERLY 20.00 FEET OF SAID LAND.

ALSO EXCEPT THEREFROM THE WESTERLY 7.33' OF SAID LOT 248.

RESERVING AND EXCEPTING THEREFROM UNTO THE COUNTY OF LOS ANGELES  
EASEMENTS FOR SANITARY SEWER, FIRE ACCESS AND HARBOR UTILITY PURPOSES  
OVER THOSE PORTIONS THEREOF DESIGNATED ON SAID MAP TO BE RESERVED BY  
SAID COUNTY FOR SUCH PURPOSES.

SUBJECT TO THE PUBLIC EASEMENT RESERVED BY THE COUNTY OF LOS ANGELES IN  
SECTION 15.19 OF THE RESTATED LEASE.

PREPARED BY :

  
CHRISTOPHER C. CHAN  
R.C.E. NO. 30282  
EXP. DATE : MARCH 31, 2008

1/15/08  
DATE



Recording Requested by:

COUNTY OF LOS ANGELES

When Recorded Return to:

COUNTY OF LOS ANGELES

Office of County Counsel  
648 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012  
Attn: Thomas Faughnan, Esq.

FREE RECORDING  
GOVERNMENT CODE SECTION 6103

\_\_\_\_\_  
SPACE ABOVE THIS LINE FOR RECORDING USE

**MEMORANDUM OF LEASE AMENDMENT  
PARCEL 20 — MARINA DEL REY**

This Memorandum of Lease Amendment ("Memorandum") dated as of January \_\_\_, 2008 (the "Effective Amendment Date"), is entered by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and PANAY WAY MARINA, L.P., a California limited partnership ("Lessee"), as lessee.

**W I T N E S S E T H**

WHEREAS, County and Lessee entered into Amended and Restated Lease No. 6684 dated September 9, 2004 (the "Lease") regarding the lease from County to Lessee of that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 20 and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises");

WHEREAS, a Memorandum of Amended and Restated Lease Agreement dated September 9, 2004 concerning the Lease was recorded in the Official Records of Los Angeles County, California on \_\_\_\_\_, 2004 as Instrument No. \_\_\_\_\_; and

WHEREAS, the portion of the Premises described on Exhibit B attached hereto and incorporated herein by this reference (the "Yacht Club Parcel") is currently improved with a commercial building described in Section 3.1 of the Lease as the "Existing Commercial Building" and other ancillary improvements;

WHEREAS, County and Lessee have entered into that certain Amendment No. 12 to Amended and Restated Lease No. 6684 dated of even date herewith (the "Amendment"), amending the Lease in certain respects, including without limitation, the documentation of the

parties' agreement with respect to certain matters pertaining to the current and future use and development of the Yacht Club Parcel and other portions of the Premises;

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Amendment. The purpose of this Memorandum is to provide notice of the Amendment. All of the terms and conditions of the Amendment are incorporated herein by reference as though set forth fully herein. In the event of any conflict between the terms hereof and the terms of the Amendment, the terms of the Amendment shall prevail. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Amendment. A true copy of the Amendment is on file in the offices of the County at Department of Beaches & Harbors, 13837 Fiji Way, Marina del Rey, California 90292.

2. Successors. Subject to the provisions of the Lease governing assignment, the rights and obligations created in the Lease, as modified by the Amendment, shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees, and assigns of County and Lessee.

3. Counterparts. This Memorandum may be executed in counterparts, each of which shall be an original and all of which together shall constitute one fully-executed document.

4. Existing Encumbrances. Lessee represents and warrants that there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Lease or the Premises except as disclosed in the Lender's Consent attached hereto, and that except for partnership consents that have been obtained by Lessee, no consent is required from any other person or entity as a condition to the effectiveness of the Amendment against Lessee and the Premises.

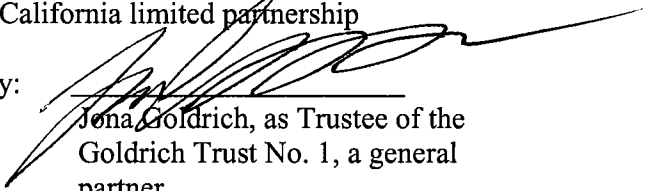
SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County and Lessee have entered into this Memorandum as of the date first set forth above.

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chair, Board of Supervisors

PANAY WAY MARINA, L.P.,  
a California limited partnership

By:  \_\_\_\_\_  
Jena Goldrich, as Trustee of the  
Goldrich Trust No. 1, a general  
partner

ATTEST:

SACHI HAMAI,  
Executive Officer of the  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.  
County Counsel

By:  \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By:  \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

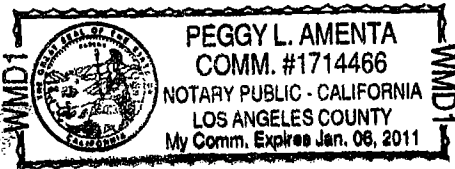
} ss.

On November 21, 2007 before me, Peggy L. Amenta, Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jona Góldrich,  
Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Peggy L. Amenta  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

**LENDER CONSENT**

The undersigned represents that it is the current beneficiary under that certain [Deed of Trust, Security Agreement and Assignment of Rents] dated \_\_\_\_\_, and recorded in the Official Records of Los Angeles County, California on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ (the "Deed of Trust"), and as such current beneficiary the undersigned hereby consents to the Amendment referenced in the foregoing Memorandum of Lease Amendment and agrees that the Deed of Trust is subject and subordinate to such Amendment.

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_

\_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



EXHIBIT A

LEGAL DESCRIPTION OF EXISTING PREMISES

Parcels 245 to 262 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Reserving and excepting therefrom unto the County of Los Angeles easements for sanitary sewer, fire access and harbor utility purposes over those portions thereof designated on said map to be reserved by said county for such purposes.

Subject to the public easement reserved by the County of Los Angeles in Section 15.19 of the Lease.

EXHIBIT B

LEGAL DESCRIPTION OF YACHT CLUB PARCEL

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS :

LOTS 246 AND 248 OF L.A.C.A. MAP NO. 88, AS PER MAP RECORDED IN BOOK 1  
PAGES 53 TO 70 INCLUSIVE OF ASSESSOR'S MAPS, IN THE OFFICE OF THE  
COUNTY RECORDER OF SAID COUNTY.

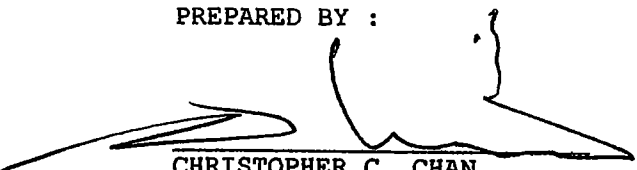
EXCEPT THEREFROM THE NORTHERLY 20.00 FEET OF SAID LAND.

ALSO EXCEPT THEREFROM THE WESTERLY 7.33' OF SAID LOT 248.

RESERVING AND EXCEPTING THEREFROM UNTO THE COUNTY OF LOS ANGELES  
EASEMENTS FOR SANITARY SEWER, FIRE ACCESS AND HARBOR UTILITY PURPOSES  
OVER THOSE PORTIONS THEREOF DESIGNATED ON SAID MAP TO BE RESERVED BY  
SAID COUNTY FOR SUCH PURPOSES.

SUBJECT TO THE PUBLIC EASEMENT RESERVED BY THE COUNTY OF LOS ANGELES IN  
SECTION 15.19 OF THE RESTATED LEASE.

PREPARED BY :

  
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